IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

C.M.A.No.871 of 2006

The Managing Director
Tamilnadu State Transport
Corporation Ltd., Trichy. .. Appellant/Respondent

vs.

1. Govindammal
2. Minor Arunkumar
3. Minor Selvam
4. Ammani
5. Subrayan .. Respondents/Claimants
(Minors rep by the mother and guardian
Govindammal the Ist respondent herein)

Appeal against the judgment and decree dated 7.6.2004 made in M.A.C.T.O.P.No.967 of 2003 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.2), Cuddalore.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.M.Dhandapani

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

By consent, the main appeal itself is taken up for final disposal.

2. The above Civil Miscellaneous Appeal is directed against the judgment and decree passed by the Motor Accidents Claims Tribunal dated 7.6.2004 made in M.A.C.T.O.P.No.967 of 2003, whereby the Tribunal, while allowing the claim petition, awarded a sum of Rs.12,84,000/- with interest at the rate of 9% p.a., for the death of one Arulsamy, husband of first respondent, father of second and third respondents and son of fourth and fifth respondents, in a motor accident said to have taken place on 20.2.2002 at about 2.30 p.m., near Valayamadevi Cross Road at Cuddalore to Vridhachalm main Road.

3.1. The brief facts are stated as hereunder:- On 20.2.2002 at about 2.30 p.m., when the deceased Arulsamy was proceeding in

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his bicycle along with one Ganesan from Mantharakuppam to his house in Cuddalore to Vridhachalam main road, near Valayamadevi cross road, the bus bearing Registration No.TN-45-N-1616 belonging to the appellant/corporation, which came behind the bicycle in a rash and negligent manner, dashed against the bicycle, resulting in the deceased sustaining grievous injuries. He was immediately taken to N.L.C. Hospital, Neyveli and in spite of the best treatment given, he died on the next day.

3.2. The respondents/claimants filed claim petition in MACTOP.No.967 of 2003 claiming a compensation of Rs.25,00,000/- for the death of Arulsamy, which was resisted by the appellant/corporation both on the ground of negligence and quantum. The Tribunal, after framing the issues and on a careful consideration of the materials available on record, held that the accident had occurred due to the rash and negligent driving of the bus belonging to the appellant/corporation. The Tribunal also held that the claimants are entitled to get compensation from the appellant/corporation and accordingly, determined a sum of Rs.12,84,000/- as compensation under various heads and awarded the same at 9% interest p.a. Hence, this appeal by the appellant/corporation.

4. The main contention of the learned counsel for the appellant is with regard to the quantum awarded by the Tribunal under the head loss of income to the family members of the deceased. He submits that the Tribunal erred in fixing Rs.8,500/- as the monthly income of the deceased for arriving at the quantum towards loss of income to the family, but the net income, even after taking into consideration the future prospects could only be fixed at Rs.7,500/-. The learned counsel for the appellant also disputed the multiplier adopted by the Tribunal, viz. 18 years, to arrive at the quantum towards loss of income.

5. We have heard the learned counsel for the respondents on the above contentions and also perused the entire materials available on record.

6. The undisputed facts are that the deceased was aged 27 years at the time of accident, as evident from Ex.A-3, accident register copy and Ex.A-4, post-mortem certificate and was working as a Grade-III technician in the Neyveli Lignite Corporation Ltd., as seen from Ex.A-5, salary certificate. The main contention of the learned counsel for the appellant is that instead of taking into account the net salary income of the deceased, the Tribunal erred in taking into consideration the future prospects and fixing the monthly income as Rs.8,500/- based on Ex.A-5, salary certificate, which itself, shows that the gross salary of the deceased was Rs.7,842/-. As rightly pointed out by the learned counsel for the appellant, we are of the confirmed opinion that even the net income, after taking into consideration the future prospects could only be Rs.7,500/-, which is also not seriously objected by the learned counsel for the respondents/claimants. Hence, we fix the monthly income of the deceased at Rs.7,500/-.

7. The contention of the learned counsel for the appellant in respect of the multiplier adopted by the Tribunal cannot be accepted in view of the fact that even as per the schedule, the proper multiplier would be only 18. Hence, applying 18 as

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multiplier and after deducting one-third towards personal expenses of the deceased, the loss of income to the family of the deceased would work out to Rs.10,80,000/- (Rs.7,500/- x 12 x 18). Accordingly, we award a sum of Rs.10,80,000/- under the said head.

8. But, taking into consideration the age of the wife of the deceased, the first respondent and the two minor children, respondents 2 and 3, we are inclined to enhance the amount awarded towards loss of consortium to the wife from Rs.15,000/- to Rs.30,000/- and towards loss of love and affection to the two minor children from Rs.10,000/- each to Rs.15,000/- each. Further, we are also inclined to award a sum of Rs.10,000/- under the head 'pain and suffering', considering the fact that the deceased died on the next day of the accident in the hospital, in spite of the best treatment given. The amount awarded towards loss of love and affection to the parents of the deceased to the tune of Rs.10,000/- each and Rs.5,000/- towards funeral expenses stand confirmed.

9. Accordingly, the respondents/claimants are entitled to get Rs.11,75,000/- as compensation as per the following heads:-

Loss of income	:	Rs.10,80,000/-
Funeral expenses	:	Rs. 5,000/-
Loss of consortium	:	Rs. 30,000/-
Loss of love and affection		
to the children	:	Rs. 30,000/-
to the parents	:	Rs. 20,000/-
Pain and suffering	:	Rs. 10,000/-
		Rs.11,75,000/-

The above award amount of Rs.11,75,000/- is directed to be disbursed to the respondents/claimants as per the apportionment made by the Tribunal in the impugned judgment.

10. With regard to the rate of interest, as per the decision of the Apex Court in **TAMIL NADU STATE TRANSPORT CORPORATION LTD. v. S.RAJAPRIYA & ORS (2005 (4) Supreme 87),** wherein the rate of interest fixed at 9% per annum by the Tribunal was reduced to 7.5% per annum taking note of the then prevailing rate of interest in bank deposits, we reduce the rate of interest from 9% to 7.5% per annum.

The appeal is, accordingly, disposed of by reducing the award of the Tribunal from Rs.12,84,000/- to Rs.11,75,000/- with interest at the rate of 7.5% per annum. No costs. Consequently, C.M.P.No.3391 of 2006 is closed.

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. Motor Accidents Claims Tribunal
   Additional District Judge,
   Fast Track Court No.2,
   Cuddalore.

2. The Record Keeper,
   V.R. Section, High Court, Madras.

+ 1 cc to Mr. M. Krishnamoorthy, Advocate SR No. 27240

+ 1 cc to M. Dhandapani, Advocate SR No. 27006

HPR(CO)
SR/30.5.2007

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